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APPLICANTS:

Dan Meisburger, Alan D. Brodie, Zhong-Wei Chen, Jack Y. Jau, Paul Sandland, Richard Simmons, Dave E. A. Smith, Hans Dohse, Dennis G. Emge, John Greene, Lee Veneklasen, Ming-Yie Ling, Surendra G. Lele, Tom Cass, Doug Hendricks, John Gibilisco

PATENT NO.: 5,717,204

ISSUED: February 10, 1998

TITLE: Inspecting Optical Masks With Electron Beam Microscopy

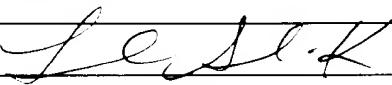
SERIAL NO.: 09/502,120

FILING DATE: February 10, 2000

ATTY. DKT. NO.: 4764

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on the date shown below. If the Express Mail Mailing Number is filled in below, then this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service pursuant to 37 CFR 1.10.

Signature: 

Typed or Printed Name: Trinidad Arriola Kern

Dated: Oct 2, 2000

Express Mail Mailing Number (optional): EL566199492US

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

DECLARATION OF FACTS BY PERSON HAVING FIRST HAND KNOWLEDGE
IN SUPPORT OF FILING ON BEHALF OF
AN OMITTED INVENTOR UNDER 37 C.F.R. SECTION 1.47(a)

Dear Sir:

This Declaration of Facts is made as to the facts that are relied upon to establish diligent effort to secure the execution of the REISSUE APPLICATION DECLARATION BY THE INVENTOR by the omitted inventor, Dan Meisburger (hereinafter "Mr. Meisburger"), for the above-referenced patent application after deposit in the U.S. Patent and Trademark Office.

This Declaration of Facts is being made by an available person having first-hand knowledge of the facts recited therein.

I, Trinidad Arriola Kern, being employed by Fenwick & West LLP and having a business address at Two Palo Alto Square, Palo Alto, California 94306, hereby declare that:

1. I am a patent attorney licensed to practice before the U.S. Patent and Trademark Office.
2. I am assisting in the prosecution of the above-referenced reissue patent application for KLA-Tencor Corporation (hereinafter "KLA-Tencor"), a Delaware corporation, having a place of business at 160 Rio Robles, San Jose, California 95134-1809. KLA-Tencor is the real party in interest and is entitled to assignment of all inventor rights and interests involving the above-referenced patent application. KLA Instruments Corporation (hereinafter "KLA Instruments") amended its name to KLA-Tencor Corporation, the real party in interest, as evidenced by the Amended and Restated Certificate of Incorporation attached herein as Exhibit A.
3. It is my information and belief that Mr. Meisburger was employed at KLA-Tencor (formerly KLA Instruments) from October 20, 1985 through October 6, 1999.
4. It is my information and belief that Mr. Meisburger, as an employee of KLA-Instruments and KLA-Tencor, was obligated to assign the subject matter of the above-referenced reissue patent application to KLA-Tencor as evidenced by the Employee Proprietary Information and Inventions Agreement dated October 28, 1985, a copy of which is attached as Exhibit B. The Employee Proprietary Information and Inventions Agreement establishes the obligation of Mr. Meisburger that all

inventions which are related to or useful in the business of [KLA-Tencor] or its subsidiaries (if any) or any client of Company, or result from tasks assigned to me by Company, shall be the sole property of Company and its assigns, and Company and its assigns shall be the sole owner of all patents and other rights in connection therewith.

The Employee Proprietary Information and Inventions Agreement also establishes the obligation of Mr. Meisburger to

execute any and all papers and documents relating to application for foreign or domestic patents...sought by Company with respect to such inventions, improvements, or discoveries, whether in its own name or that of a nominee....

5. It is my information and belief that U.S. patent number 5,717,204, the subject of the above-referenced reissue patent application, was assigned by the original inventors, including Mr. Meisburger, to KLA Instruments Corporation ("KLA Instruments"), which assignment document was recorded in the Patent and Trademark office at Reel 7238 and Frame 0244. A copy of the assignment for U.S. Patent Number 5,717,204 is attached herewith as Exhibit C. The assignment of issued U.S. patent number 5,717,204 establishes Mr. Meisburger's obligation to execute and deliver without further compensation any power of attorney, assignment, application, whether original, continuation, continuation in part, divisional or reissue, or other papers which may be necessary or desirable fully to secure to the Assignee, its successors and assigns, the inventions....

6. It is my information and belief that Dan Meisburger is a joint inventor of the subject-matter claimed in the above-referenced reissue application.

7. It is my information and belief that Mr. Meisburger's last known home address was 1507 Montalban Drive, San Jose, California, 95120-4830.

8. On February 10, 2000, the above-referenced reissue application, including a specification with drawings and claims and an abstract, was filed in the U.S. Patent and Trademark Office.

9. On April 3, 2000, we received a NOTICE TO FILE MISSING PARTS OF REISSUE APPLICATION for the above-referenced reissue application.

10. On June 7, 2000, Laura A. Majerus (hereinafter "Ms. Majerus"), attorney at Fenwick & West LLP, mailed via a Federal Express package (with Label No. 654 8369 5649) to Mr. Meisburger at his last known home address copies of the above-referenced reissue application and a cover letter requesting Mr. Meisburger to review the reissue application and to determine whether the application names the correct inventors for the claimed invention.

(Exhibit D)

11. On August 29, 2000, I mailed via a Federal Express package (with Label No. 8214 1030 2345) to Mr. Meisburger at his last known home address a REISSUE APPLICATION DECLARATION form and an ASSIGNMENT form, along with an enclosed cover letter requesting that Mr. Meisburger review, sign and date both forms. The cover letter also included a deadline for returning the REISSUE APPLICATION DECLARATION form and an ASSIGNMENT form by September 13, 2000. The forms required Mr. Meisburger's signature so that a proper response could be prepared to a NOTICE TO FILE MISSING PARTS OF REISSUE APPLICATION mailed by the U.S. Patent and Trademark Office on April 3, 2000. In addition, the above Federal Express package included a pre-paid Federal Express return envelope for returning the contents of the Federal Express package to Fenwick & West LLP, Two Palo Alto Square, Palo Alto, California 94306. When the above REISSUE APPLICATION DECLARATION was mailed to Mr. Meisburger, he was no longer employed with KLA-Tencor.

Copies of the REISSUE APPLICATION DECLARATION form and an ASSIGNMENT form, the instruction letter in the above Federal Express package, and the Federal Express label are attached as EXHIBIT E.

12. On September 13, 2000, I had not yet received a signed copy of the REISSUE APPLICATION DECLARATION form and an ASSIGNMENT form from Mr. Meisburger.

13. On September 13, 2000, I telephoned Mr. Meisburger at his home telephone number (408-997-5400). A woman answered the telephone and informed me that Mr. Meisburger was not available. I left a message requesting that he call me back at my number of 650-858-7666 so that I could have him execute a REISSUE APPLICATION DECLARATION and ASSIGNMENT forms for purposes of responding in a timely manner to the above NOTIFICATIONS. Mr. Meisburger never returned my phone call.

14. On September 14, 2000, I again telephoned Mr. Meisburger at his home telephone number (408-997-5400). The answering machine confirmed that it was the Meisburger residence. I left a message requesting that he call me back at my number of 650-858-7666 or simply review and return signed versions of the REISSUE APPLICATION DECLARATION and ASSIGNMENT forms which were sent via Federal Express for purposes of responding in a timely manner to the above NOTICE TO FILE MISSING PARTS OF REISSUE APPLICATION.

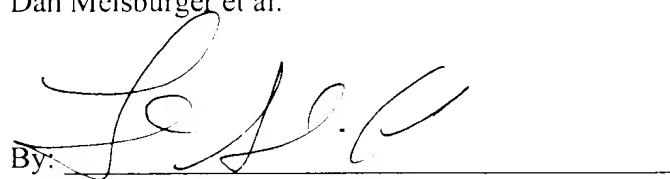
15. On September 22, 2000, I received a voicemail message from Mr. Meisburger indicating that he refuses to sign the declaration and power of attorney forms for the above-referenced reissue application. A copy of a transcript of that voicemail message is attached as Exhibit F.

16. On September 27, 2000, at approximately 11:00 a.m. I telephoned Mr. Meisburger at his home telephone number (408-997-5400). I spoke to Mr. Meisburger and asked him if he would review and sign the REISSUE APPLICATION DECLARATION and ASSIGNMENT forms so that we could file a timely response to a NOTICE TO FILE MISSING PARTS OF REISSUE APPLICATION. Mr. Meisburger stated that he refused to sign any such REISSUE APPLICATION DECLARATION and ASSIGNMENT forms. I then asked Mr. Meisburger if he would state the reason for his refusal. Mr. Meisburger stated that he would prefer not to state the reason for refusal.

I hereby declare that all statements made herein to the best of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,
Dan Meisburger et al.

Dated: Oct. 2, 2000

By: 
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